STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Enbridge Pipelines (Illinois), L.L.C.,	)	
	)	
Application Pursuant to Section 8-503, 8-509 and	)	07-0446
15-401 of the Public Utilities Act/The Common	)	Upon Reopening
Carrier by Pipelines Law to Construct and Operate	)	
a Petroleum Pipeline and When Necessary to Take	)	
Private Property As Provided by the Law of	)	
Eminent Domain.	)	

PLIURA INTERVERNORS
MOTION TO COMPEL,
MOTION TO VACATE SCHEDULING ORDER AND
MOTION FOR SANCTIONS

NOW COME the Intervenors herein who throughout these proceedings for convenience purposes have been identified as "Pliura Intervenors", by and through their mutual counsel, Thomas J. Pliura, M.D., J.D., and respectfully move the Honorable administrative Law Judge for an Order compelling Applicant to answer data requests as ordered by the Honorable ALJ on September 3, 2014 and for other relief as detailed below. In support of said motion, Pliura Intervenors respectfully state as follows:

1. On August 26, 2014, Pliura Intervenors made a filing entitled "Motion to Compel and Motion to Vacate Filing Deadline and Hearing Date". Therein, Movants sought a ruling compelling Applicant "to completely answer all [Movants'] data requests."
2. On September 3, 2014, the Honorable ALJ entered an order addressing the motion. Therein,
    a. As to DR 5 and 8, the order states,

> "DRs 5 and 8 relate to the production of documents in Applicant's possession "disclosing revised calculations of public benefit due to the reduced pipeline diameter and reduced pipeline capacity" and "due to the change in primary product to be shipped from Canadian heavy crude to Bakken light oil."

It is observed that in support of its Motion to Reopen and Amend Order, Applicant states in part, "Marathon Petroleum Company L.P. ('Marathon'), which operates three PADD II refineries, including one in Robinson, Illinois, that are reachable via the Patoka Hub, has now committed to have Enbridge move light crude to Patoka via the SAX pipeline in order to supply these refineries. Marathon has contracted for enough of the line's initial capacity to warrant construction of the line." (Motion to Reopen at 5)

Similar statements are made in Applicant's Reply on Motion to Reopen and other filings.

As such, in terms of purpose and need, as updated, Applicant's Motion to Reopen is relying on the commitment from Marathon. For discovery purposes, Movants' DRs 5 and 8 are reasonably related thereto.

Accordingly, it is hereby ruled that Applicant shall send, on or before September 5, 2014, a supplemental response to DRs 5 and 8 that either contains a copy of the requested documents (or portions thereof) containing such calculations, or indicates that Applicant has no such documents in its possession."

b. With respect to DR 9 and 12, the Order states, impertinent part:

DR 9 asks, "What percentage of the shipper commitments now in place for the SAX is from companies other than Marathon Petroleum or its subsidiaries and affiliates?" ***

DR 12 states, "Please provide documentation detailing all current shipper commitments for the SAX. If it is the position of the applicant that disclosure of such information is prohibited by state or federal law or regulation, please provide a citation to all such statutes or regulations upon which Applicant asserts a limitation on disclosure." ***

The DR response does not identify the amount or percentage of the 210,000 barrels per day ("bpd") that is attributable to Marathon. For discovery purposes, this information appears to be reasonably related to the updated purpose and need as discussed above.***

It is hereby ruled that Applicant shall identify, in a supplemental DR response to be sent on or before September 5, 2014, the amount of the 210,000 bpd that is attributable to Marathon. If Applicant believes this number may not be disclosed due to confidentiality, it can file a motion seeking relief in that regard; however, if Applicant chooses to file a motion rather than including the information in a supplemental DR response, it is not known what effect this would have on the schedule in this proceeding.

c. With respect to DR 10, the order states, in pertinent part:

> In DR 10, Movants ask, "What percentage of the shipper commitments now in place for the SAX is for the transportation of Canadian Heavy Crude?" ***
>
> In Applicant's response to the Motion, it is not clear whether the term "shippers do not commit" is intended to apply to the particular shippers with "commitments now in place for the SAX." It is hereby ruled that Applicant shall submit, on or before September 5, 2014, a supplemental response to DR 10 providing clarification.

3. Notwithstanding this clear and unambiguous order, Applicant moved on September 4, 2014 to reaffirm a protective order previously agreed to and previously signed by the parties.
4. The Honorable ALJ then almost immediately issued an order on September 4, 2014 granting the Applicant's motion, without seeking or allowing any input from the intervenors.
5. Astoundingly, notwithstanding the ALJ's near-immediate response to Applicant's motion for protective order, and with no justification or authority whatsoever, on September 5, 2014, counsel for Applicant sent an email messages to Counsel for Pliura Intervenors demanding an additional affirmation by Counsel for Pliura Intervenors that he would abide by the protective order.
6. Attorney Thomas Pliura was participating in both state court proceedings and federal court proceedings on Friday, September 5, 2014 and was out of the office virtually the entire day.
7. At around 4:53PM on September 5, 2014, Counsel for applicant sent another e-mail message again demanding his "affirmation", providing evasive, argumentative, unverified and incomplete answers to DR 5, 8 and 10 an no answer whatsoever to DR 9

and 12. Astoundingly, with respect to 9 and 12, counsel actually produced a blank piece of paper.

8. A copy of said "response" is attached hereto. Please note that the final page, bearing only a heading and no content, was actually submitted in this fashion.

9. This type of improper, unprofessional and willful behavior should not be tolerated by the Honorable ALJ and the Commission.

10. Then on September 8, 2014, the Honorable ALJ *sua sponte* issued an order demanding that Applicant provides answers to the following questions ("Qs"):

> Q1: Has the "amount of the 210,000 bpd that is attributable to Marathon" ("Subject Information") been provided to Pliura Intervenors?
>
> Q2: Has the Subject Information been provided to Turner Intervenors?
>
> Q3: If the answer to the either or both of the questions above is "No," does Applicant intend to provide the Subject Information to such Intervenors on a confidential basis pursuant to the protections afforded in and terms of the Protective Order approved in a ruling issued September 4, 2014?
>
> Q4: If the answer to Q3 is "No," does Applicant intend to invoke and implement the "additional protections" or "no disclosure" provisions of paragraph 18 of the Protective Order?
> Please note: What effect the invoking of such provisions will have on the current schedule in this proceeding is unknown.

11. Prior to responding to the ALJ's order, Applicant's counsel sent a revised response which included the missing page. It came, of course, three days after the deadline and only after the ALJ's *sua sponte* order.

12. But, even after being forced to abandon its gamesmanship and belatedly provide the withheld response, the response is non-responsive. Specifically, the amount of the 210,000 bpd attributable to Marathon WAS NOT included in the response. What was included instead was a lengthy UNVERIFIED argument as to why Intervenors should not be entitled to the information.

13. Very respectfully, Pliura Intervenors posed straightforward easily answerable questions. Applicant willfully refuses to provide meaningful, straightforward, non-argumenative, verified answers even after being ordered to do so.
14. In keeping with the Honorable ALJ's prior order, the deadline of September 9, 2014 for Pliura Intervenors to provide additional evidence must now be vacated. Additionally, the deadline for evidentiary hearing herein must be vacated until such time as Applicant has provided complete, accurate, straightforward and verified answers to the data requests.
15. Further, in light of the recent disclosure by staff of previously unknown *ex parte* communications between staff and Applicant prior to and after reopening of the instant matter, Pliura Intervenors further request an order compelling staff and Applicant to provide any and all documents related to communications between staff and Applicant.
16. Such disclosure should include, but not be limited to communications in any form with respect to the revelation in April 2014 of the change in pipeline diameter, the reopening of the instant proceedings, and the issues to be addressed by Applicant in its reopening.
17. On this issue, Pliura Intervenors further note:
    a. *Ex Parte* contacts are prohibited under the rules at 83 Ill. Adm. Code 200.710.
    b. Generally, governmental bodies should and must seek to avoid even the appearance of impropriety in matters of public importance, especially in the face of the substantial, if not unprecedented public participation and opposition present here.
    c. Until very recently, Pliura Intervenors had been unaware there had been any *ex parte* contacts or communications between Enbridge and ICC employees in regards to 07-446 and 13-446.

d. Recent Staff filings verify that there have been communications between Enbridge representatives and ICC staff and counsel while 13-0446 was pending and both prior to and shortly after reopening 07-0446. Those communications are undocumented in the record and have not been shared with or previously disclosed to intervening parties. (see attached exhibits)

e. Turner Intervenors has raised similar issues in a recent filing and included what little is known by Intervenors of the communications.

f. Respectfully, Pliura Intervenors join with Turner Intervenors in seeking all details regarding any *ex parte* contacts or communications that have occurred, directly and/or indirectly, between Enbridge and/or its counsel and the ICC staff and/or counsel related to 07-0446 and 13-0446.

g. Pliura Intervenors have reviewed the record and find no evidence of prior disclosure of any of these communications as required by the rules.

h. Pliura Intervenors seek to compel immediate disclosure of all communications between Enbridge (or its legal counsel) and the ICC staff or counsel, including dates of communication, method of communication, summaries of any communications, copies of all e-mails or electronic documents sent between individuals, copies of data requests sent by ICC staff to Enbridge and dates the data request were sent along with any communications accompanying the data requests, copies of Enbridge responses to ICC staff data requests and the dates the responses were sent, copies of phone logs, notes or memoranda, where any of the communications were directly or indirectly related to 07-446 or 13-446.

18. Finally, as a consequence of Applicant's willful refusal to comply with the Honorable ALJ's prior order compelling production of the data requests and perhaps especially as a result if its misrepresentations in response to the September 8, 2014 order, as well as to deter future willful non-compliance, Pliura Intervenors respectfully urge the Honorable ALJ to impose monetary sanctions on Applicant and its counsel, including reasonable attorneys fees.

WHEREFORE, Pliura Intervenors respectfully pray for an order granting the relief sought herein.

Respectfully submitted this 8th Day of September, 2014.

s/THOMAS J. PLIURA, M.D., J.D.
Thomas J. Pliura,
Attorney for "Pliura Intervenors"

Thomas J. Pliura
210 E. Center Street
P.O. Box 130
LeRoy, IL 61752
(309) 962-2299 (Tel)
(309) 962-4646 (Facsimile)
e-mail: tom.pliura@zchart.com

PROOF OF SERVICE

The undersigned certifies that on this 8th day of September, 2014 he served a copy of the foregoing document together upon the individuals on the attached service list, by electronic mail.

Hon. Larry Jones
Administrative Law Judge
Illinois Commerce Commission
527 E. Capitol Ave.
Springfield, IL 62701
mailto:ljones@icc.illinois.gov

Amy Back & Joel Kanvik
Enbridge Energy Company, Inc.
1409 Hammond Ave.
Superior, WI 54880
mailto:joel.kanvik@enbridge.com

Bruce Stevenson, Corporate Secretary
Enbridge Pipelines (Illinois) L.L.C.
1100 Louisana St., Ste. 3300
Houston, TX 77002-5217
mailto:bruce.stevenson@enbridge.com

Gerald Ambrose, Dale E. Thomas
& G. Darryl Reed
Attys. for Petitioner
Sidley Austin LLP
One S. Dearborn
Chicago, IL 60603
mailto:gambrose@sidley.com
mailto:dthomas@sidley.com
mailto:gdreed@sidley.com

Mark Maple, Case Manager
Illinois Commerce Commission
527 E. Capitol Ave.
Springfield, IL 62701
mailto:mmaple@icc.illinois.gov

John Feeley
Office of General Counsel
Illinois Commerce Commission,
160 N. LaSalle, Ste. C-800
Chicago, IL 60601
mailto:jfeeley@icc.illinois.gov

James V. Olivero
Office of General Counsel
Illinois Commerce Commission
527 E. Capitol Ave.
Springfield, IL 62701
mailto:jolivero@icc.illinois.gov

Mercer Turner,
Law Office of Mercer Turner, P.C.
202 N. Prospect, Ste. 202
Bloomington, IL 61701
E-Mail: mercerturner1@msn.com

Diana Hospelhorn
McLean County Administration
115 E Washington St Rm 401
Bloomington, Il 61701
diana.hospelhorn@mcleancountyil.gov

Don Knapp
First Assistant States Attorney
Government Center
115 E Washington St Rm 401
Bloomington, Il 61701
don.knapp@mcleancountyil.gov

s/THOMAS J. PLIURA, M.D., J.D.
Thomas J. Pliura,
Attorney for "Pliura Intervenors"

Thomas J. Pliura
210 E. Center Street
P.O. Box 130
LeRoy, IL 61752
(309) 962-2299 (Tel)
(309) 962-4646 (Facsimile)
e-mail: tom.pliura@zchart.com